ANTONIO R. VILLARAIGOSA
MAYOR

September 27, 2011

BY ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW,
Room TW-A325
Washington, DC 20554

Re: Acceleration of Broadband Deployment Notice of Inquiry WC Docket No. 10-59

Dear Secretary Dortch:

Please find enclosed the reply comments of the City of Los Angeles, California. In these comments, the City joins with the National League of Cities, the National Association of Counties, the United States Conference of Mayors, the International Municipal Lawyers Association, the National Association of Telecommunications Officers and Advisors, the Government Finance Officers Association, the American Public Works Association, and the International City/County Management Association in opposing the adoption of federal rules governing local right-of-way and wireless facility siting practices. The Commission should not and may not adopt federal rules in this area.

The reply comments show that the industry's criticisms of the City are vague and unsupported, and they provide no basis for Commission rules. In fact, the City's wireless facility siting practices have facilitated broadband deployment, while protecting important community values. The Commission should not interfere with a model that is achieving such success.

Very truly yours,

ANTONIO R. VILLARAIGOSA
Mayor

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Acceleration of Broadband Deployment	)	WC Docket No. 11-59
Expanding the Reach and Reducing the Cost	)	
of Broadband Deployment by Improving	)	
Policies Regarding Public Rights of Way and	)	
Wireless Facilities Siting	)	

REPLY COMMENTS OF THE CITY OF LOS ANGELES, CALIFORNIA

The City of Los Angeles, California, files these reply comments in the above-captioned matter to address certain unfounded criticisms of the City, and to discourage the Commission from taking any action to interfere with the City's wireless facility siting practices. AT&T and PCIA criticize the City's wireless facility siting practices, however their criticisms are vague, unsupported, and inaccurate. In fact, the City's practices have successfully promoted wireless facility siting across the community. The City supports the opening comments filed by the local government national associations, and urges the Commission to refrain from attempting to regulate these local practices based on these industry claims.

I. THE INDUSTRY'S CRITICISMS OF THE CITY ARE INACCURATE.

In their opening comments, both PCIA and AT&T criticize the City's wireless facility siting practices. These criticisms provide no basis for Commission regulation.

A. The City's Wireless Facility Siting Process Is Not Delaying Broadband Deployment.

AT&T criticizes the City's wireless facility siting process in very vague terms. It claims that for cell sites in the City that came on the air in 2010 "it took more than two and [a] half

years from the time AT&T initiated the search for the site to the time the site was fully acquired with all approvals obtained."[1] AT&T makes the identical claim—with no supporting details—for San Francisco, Chicago, New York, Baltimore, and Washington, D.C.AT&T's complete failure to provide any specific details on the City's case, however, makes a direct City response impossible.[2]

Generally, the City has processed AT&T's applications frequently and quickly. In the City, the Department of Planning's Office of Zoning Administration processes applications for the placement of wireless telecommunications facilities on private property. Between July 1, 2008, and August 10, 2011, the Planning Department approved a total of 192 new wireless (CUW) applications. In addition, the City's Department of Public Works, Bureau of Engineering oversees the permitting process under the City's Above Ground Facilities ordinance, which governs installation of facilities in the public rights-of-way. Since 2003, AT&T has submitted eight applications under the Above Ground Facilities ordinance, one of which was cancelled. Of the remaining seven applications, all were granted. While one application was delayed because AT&T provided incomplete information and needed to finalize its negotiations for pole access, the other six permits were issued in less than six months.

AT&T's own comments reveal that the source of delays is often *not* the local processing of applications. As the company puts it: "[L]ocalities are often already blanketed with cell sites. . . . As a consequence of the maturity and density of these existing wireless networks, finding new

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[1] Comments of AT&T, WC Docket No. 11-59 ("AT&T Comments"), at 4, 7 (July 18, 2011).

[2] As discussed, *infra*, AT&T appears to be complaining less about the City's regulatory processes, than about its own inability to find and negotiate agreements for access to open space. But since it provides no specific details, it is impossible to tell.

locations is much more difficult than in the past."[3] But this "blanket[ing]" shows that the current process is successful, not that it needs to be regulated. Despite this, providers should have little trouble finding additional locations to place their facilities in the City today. For example, the City's Department of Water and Power ("DWP") has a total pole inventory of approximately 310,000 poles, 90,000 of which are solely owned, and 222,000 of which are jointly owned by DWP and various other members of the Southern California Joint Pole Committee, of which AT&T is a member. AT&T and most wireless service companies doing business within the DWP's service territory attach their facilities to utility poles through the prevailing Joint Pole Agreement, which has been in place for decades. If these poles were inadequate to meet AT&T's needs in a particular case, AT&T could either exercise its right as a Joint Pole Committee member to install a new solely-owned pole, or pay to replace an existing pole with one having greater load capacity.

In the City's experience, most delays in the wireless siting process are caused by defects in the applications themselves. The City's Planning Department frequently receives applications that are incorrect, incomplete, or inconsistent with the City's requirements. Among other things, these applications omit required maps, seek to place facilities that defy the City's screening, height, or set-back restrictions, or are otherwise improper. When the City receives such applications, it notifies the applicant of the errors, and encourages the applicant to submit a corrected application for processing.

In light of this, AT&T's decision to criticize the City's process in only the vaguest of terms provides no basis for Commission action.

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[3] *Id.* at 7.

B. The City Does Not Subject All Collocation Requests to a Full Discretionary Review.

PCIA's criticism of the City is also off the mark. It includes the City on a list of communities in which "[r]egardless of the status of the existing tower, collocation applications . . . must go through a full zoning review and hearing. One must obtain a variance or special use permit for each new collocation on a tower."[4] PCIA appears to have included the City on this list in error. The City not only favors collocation; it also approves many collocations by right under California law.

To begin with, PCIA's criticism is surprising, since the City strongly encourages collocation of facilities. Its code provides that "[a]n effort shall be made to locate new WTF on existing approved structures or sites, when feasible."[5] This must be a "good faith effort,"[6] and a provider seeking to place new facilities must provide "coverage/interference analysis and capacity analysis and a brief statement as to other reasons for success or no success, including a list of alternative sites that were examined . . . ."[7]

The City complies with Section 65850.6 of the California Government Code. It provides that collocation "shall be a permitted use not subject to a city or county discretionary permit" if it satisfies two conditions.[8] First, the facility on which the collocation facility is to be placed must have been subject to a City discretionary permit, and compliant with environmental impact

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[4] Comments of PCIA—The Wireless Infrastructure Association and the DAS Forum (A Membership Section of PCIA), WC Docket No. 11-59, Exhibit B at 7.

[5] Los Angeles Municipal Code § 12.21.A.20(a)(3).

[6] Los Angeles Municipal Code § 12.21.A.20(c).

[7] Los Angeles Municipal Code § 12.21.A.20(b)(5).

[8] Cal. Gov't Code § 65850.6(a).

requirements.[9] Second, the collocated facility must be "consistent with requirements for the wireless telecommunications collocation facility . . . on which the collocation facility is proposed."[10] Such requirements can include "types of collocation facilities that may be allowed on a wireless telecommunications collocation facility; height, location, bulk, and size of allowed collocation facilities; and aesthetic or design requirements for a collocation facility."[11]

In accordance with California law, the City's application instruction sheet provides that:

> Conditional Use applications shall be required to prospectively establish a co-location facility, which will establish a basis to permit future facilities by right. Plan Approvals shall be limited to the proposed facilities requested by one applicant. The co-location application precludes further discretionary review, so the level of detail in the application is important.[12]

The Department of Planning maintains a streamlined "Approval of Plan" process to expedite the processing of requests that do not exceed an existing conditional use permit. The public counter has reviewed 256 case submitted by AT&T representatives from January 2011 to August 23, 2011. Counter staff deemed that 178 of the 256 qualify for an over-the-counter approval of plan process to obtain building permits. The remaining 78 cases need to go though a minor plan approval process, but do not require a full conditional use process.

* * *

In sum, AT&T's and PCIA's claims about the City are unsupported, and the Commission

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[9] Cal. Gov't Code § 65850.6(a)(2).

[10] Cal. Gov't Code § 65850.6(a)(1).

[11] Cal. Gov't Code § 65850.6(b)(2).

[12] *See, e.g.,* City of Los Angeles Planning Department, Wireless Telecommunication Facilities, Instruction Sheet, *available at*: http://cityplanning.lacity.org/Forms_Procedures/7806.pdf. In addition, under the Above Ground Facility ordinance, applications that seek to place facilities in the rights-of-way are not required to go through a full discretionary hearing.

may not rely on these allegations to justify Commission rules. Moreover, this case underscores that the Commission should not assume that the industry's unserved, undocumented claims are accurate.

II. THE COMMISSION SHOULD NOT AND MAY NOT INTERFERE IN THIS AREA.

The Commission should not and may not interfere with the City's local wireless facility siting practices. The City fully supports the comments filed in this matter by the local government national associations.[13] These comments show that local right-of-way and wireless facility siting practices are not impeding broadband deployment or adoption, and that they serve important local values. Our comments further document that the Commission has no statutory authority over these local practices, and that interfering with those practices would raise serious constitutional issues.

CONCLUSION

The City urges the Commission to respect statutory limits on its authority, and to decline to attempt to regulate State and local wireless facility siting practices based on the industry's unsupported claims. In the City's case, AT&T's and PCIA's criticisms of City practices are vague and inaccurate—and they ignore the City's successful record granting wireless facility applications. The Commission should take no action in this proceeding that would limit this important local authority.

Respectfully submitted,

ANTONIO R. VILLARAIGOSA, Mayor

[13] Comments of the National League of Cities *et al.*, WC Docket No. 11-59 (July 18, 2011).